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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/713,446
Filing Date: November 14, 2003
Appellant(s): WALKER ET AL.

Robert Dulaney (28,071)
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed March 13, 2007 appealing from the Office action mailed August 17, 2006.

(1) Real Party in Interest

The appellant's statement of the real party in interest is correct.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

A substantially correct copy of appealed claim 23 appears on page 13 of the Appendix to the appellant's brief. The minor errors are as follows: the word 'areas' is marked through in the claim, therefore the term image should be in plural form.

(8) Evidence Relied Upon

6,587,596	HAEBERLI	7-2003
2003/0055871 A1	ROSES	3-2003
2002/0191860 A1	NODA ET AL	3-2001

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1, 3-7, 11, 13-17, and 21-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Roses in view of Noda and Haeberli.

As to claim 1,

Roses teaches:

A computer-implemented method for facilitating user customization of the image content of an image container in an electronic product design, the method comprising: (Roses [0068] stating the method is computer-implemented, Fig. 1 clearly shows a document composition website 110 that is connected to a customer photo web site 115 and general web site 120 for obtaining photos and images for obtaining image content for insertion into a document (see Fig. 2, where the images are put into an image basket) and such documents and their templates are shown in Fig. 5, with an image editing step shown in Fig. 6 with cropping capabilities as shown and in [0037,0043,0048])

-Displaying an electronic product design to a user, the design containing at least one or more image containers, each image container having content that is at least a portion of a base image associated with the image container; (Roses shows an electronic document or product design in Fig. 5, with the image areas shown in Fig. 6 and allowing the user to manipulate them – see [0028] for posters, Fig. 10 shows as item 1021 and next to it, that a “Year 2001 Calendar Type” can be chosen as a template, thus illustrating another type of document template, the document creation module / tool of Roses is shown in Fig. 2 as element 206, which is facilitated by the document creation / storage module 306 in Fig. 3 – see [0032-0034], where Roses teaches that documents have areas for fixed images (e.g. images with a fixed size, thus requiring cropping as in Fig. 6). Further, in [0047], it is taught that templates can have modifiable images, e.g. images that can be modified by the user, wherein the fixed images consist of images of a given size for insertion into a block, where in [0048] it is taught that the fixed images are clearly modifiable, since they can be cropped, filter, moved (location), et cetera)

-Allowing the user to select an image container in the electronic product design of the content of the image container, and (Roses Figure 5, edit view 520 illustrates the areas of the template where selected images and custom text may be placed [0042]. Additionally, [0047-0048] wherein there are modifiable images in the template that the user can customize, and also the fixed images can be customized by allowing the user to choose the image. The user clearly selects an area of the template to edit

and/or place the image in, specifically [0038,0043,0048] in reference to both Figure 6 and the multi-layered PDF files produced as output.)

-In response to a user request to perform cropping for the selected image container, displaying to the user (Roses Fig. 6 and [0037,0043-0044,0048], where the image is displayed in the section 611 for example, and cropping can be performed)

Roses fails to teach, but Noda teaches (**displaying to the user**):

-The associated base image, and (Noda Fig. 3 where the image is displayed in area 46, and the user selects which image to show [0052] in the full size.)

-A cropping indicator positioned to indicate to the user the portion of the base image that is the current content of the image container. (Noda-Cropping indicator 84 showing portion of image 46 to be operated upon in Noda Fig. 3 as discussed in [0081] is fit to the selected paper size or template spot. The crop area and concomitant boundaries may be modified and reshaped by the user [0083-0084].)

Roses teaches most of the limitations of the stated claims, but does not teach **showing the user the base image, the cropping indicator**, the ability to modify to perform **custom** cropping, in that the image containers contain at least a portion of a base image initially.

Noda teaches the display of **the base image and the cropping indicator**.

Roses and Noda fail to expressly teach **custom cropping / customization of image container** (definition of customization is taken to mean state information) but Haeberli teaches the limitation of allowing the user to modify the portion of the base image in the current image area by adapting the cropping indicator to match the shape of the region and the like. Specifically, Haeberli allows the user to modify cropping information, since the **stored current product information**, where that information includes product attributes including cropping information – boundary, shape, rotation, and orientation of the selected portion of the image to be applied to the recited image (21:5-18, 21:35-55), such that any changes the user makes or has made to the image are retained through tag information so that they can be undone or redone as needed (21:55-23:20). Therefore, since **each image** has stored information, **each image container would therefore contain at least a portion of a selected base image**. Roses could have suggested such information in the form of PDF files generated.

The Roses, Noda, and Haeberli references are directed to a similar problem solving area and are analogous art, as all three deal with inserting images into document templates and manipulating them to generate a final end product.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the system of Roses with the cropping capabilities and cropping indicator of Noda because the system of Noda clearly allows for more effective cropping of images – in that it provides an explicit, easy manner for a user to specify cropping area (Figure 3, [0081-0084]) , especially since Roses does not show how the images are cropped per se or if the user is able to expressly choose the desired portion of an image to go in the template, and further Noda allows more options as far as customizing images such that when the image customization process is complete, multiple images could be combined into one and put a documents of Roses (Figs. 4-6) or Noda (Figs. 10A-10D), which would prima facie allow for greater flexibility in how the user can manipulate the documents, as shown in Noda, which is beneficial.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Roses in view of Noda as with the custom cropping of the Haeberli patent, where the user issues the request for custom cropping and modifies the custom area as desired, because Haeberli allows the user to undo crops and other image changes to allow the user to customize the image area as desired, and since Haeberli allows the user to modify such images and does not “forget about the base image” (6:1-45) since the user has uploaded the various images to the Shutterfly website in the first place and they are stored there, and the user can log back into the site and continue modifications (21:5-23:20) as if no time had elapsed, and other similar improvements shown therein.

As to claim 11, Applicant invokes means-plus-function language in claim 11. Clearly, the recited means disclosed by the references would be equivalent to that of applicant. The rejection to claim 1 is incorporated by reference. For example, the customization capabilities of the Roses reference in Figs. 4-7 and as taught in [0042-0043], where templates can be edited and have specific areas and layouts, as does Noda, for example in Figs. 9A-9F, and even more so in Figs. 10A-10D where the user can configure the locations of the various regions that are superimposed, which clearly provides the functionality recited by applicant in the specification and shown in for example Fig. 3. In Fig. 4 of the instant application, where the user can change cropping of an image, the user clearly can make those choices as shown in Fig. 6 of Roses and Figs. 3-5 and 11-13 of Noda, and the user can switch between images as shown with the navigation buttons on the Roses reference in Fig. 3 in the image chooser box, and Noda also allows modification in that manner. Clearly the image modification system of applicant shown in Figs. 5-9 of the instant application corresponds to the system of Noda in Fig. 3, with the manipulable cropping areas and boundaries (see element 84) and further in [0081-0084] Noda reveals that the crop boundary may be changed in size so as to correspond to the capabilities of applicant's recited invention. In the Haeberli patent, the user issues the request for custom cropping and modifies the custom area as desired. Additionally, Haeberli allows the user to undo crops and other image changes to allow the user to customize the image area as desired.

Clearly, all three systems are software, and it is well known in the art that any piece of software functionality can easily be implemented on another (same look and

feel) in a manner where the functionality is alike yet uses completely different code to do so. Therefore, the software functionality is concomitant under the doctrine of functional equivalence. As such, the means plus function limitations under 35 U.S.C. 112, sixth paragraph, have been met, and examiner has met the burden to prove a *prima facie* case of equivalence between the recited elements. The rejection of claim 1 is incorporated by reference in its entirety for all other limitations not expressly described above and for motivation and rationale.

As to claim 33, Roses clearly teaches [0068] the recited computer-readable medium that performs the recited program. The rejection to claim 1 is incorporated by reference.

As to claim 34, Roses recites a "system for generating documents" [0009] that "includes at least one server," where the term *server* is known in the art to mean a computing device that provides information over a network, which inherently includes a processing unit / processor. Further, the system includes a computer [0008], which also inherently includes a processor. The rejection of claim 1 is incorporated by reference in its entirety.

As to claims 3 and 13, as set forth in the rejection to claim 1, Roses does not expressly teach but Noda allows the user to change the size, position, and other aspects of the cropping boundary, which is *prima facie* equivalent to the cropping indicator [0083-0084], clearly this is done relative to the base image, where the base image is shown on the screen and the cropping indicator is altered relative to the base

image as desired by the user. Motivation and combination is taken from the parent claim and incorporated by reference herein.

As to claims 4 and 14, Roses does not expressly teach but Noda clearly sets forth in [0082-0083] that the user cannot change the aspect ratio (e.g. the width to height ratio) even though the size can be in certain embodiments. Motivation and combination is taken from the parent claim and incorporated by reference herein.

As to claims 5 and 15, the system of Roses allows the user to view the image in the preview window 602 of Fig. 6 when the image has been selected and scaled and/or cropped to fit, or manually filtered – see Fig. 6 and [0043-0045], and so it is updated, and the user can also do so at any time by hitting the preview button. Further, motivation or combination is taken from the rejection to the parent claim and herein incorporated by reference. Updating an image upon modification in the preview window is also prima facie obvious.

As to claims 6 and 16, Roses does not expressly teach, but Noda teaches that the user can prima facie move the crop boundary / indicator around the base image in Noda as taught in [0081] and as shown in Fig. 3 for example. Motivation and combination is taken from the parent claim and incorporated by reference herein.

As to claims 7 and 17, the system of Roses allows the user to view the image in the preview window 602 of Fig. 6 – see Fig. 6 and [0043-0044] -- when the image has been selected and scaled and/or cropped to fit, or manually filtered, but does not expressly teach the recited updating. Noda expressly teaches that the cropping window position is updated – e.g. the user drags that window 84 around by dragging the handle

86 with the mouse [0082-0084] (see Noda [0081—0082]), and so it is updated, and the user can also do so at any time by hitting the preview button. Updating an image upon modification in the preview window is also prima facie obvious. Motivation and combination is taken from the parent claim and incorporated by reference herein. Also see the discussion in the rejection to claim 5 above, which is incorporated by reference.

As to claims 21 and 26, Roses does not expressly teach but Noda reference teaches that the user can open a template and that the system can automatically insert an image that is scanned into the first field in the template, which would constitute the recited limitation – e.g. the computer would automatically selected the base image associated with the selected image area – see [0051-0057], Noda. Motivation and combination is taken from the parent claim and incorporated by reference herein.

As to claims 22 and 27, Roses does not expressly teach but Noda reference very clearly teaches that the user can select a thumbnail of an image to put into a template [0051-0057], and clearly in Figure 7 the crop boundary takes the shape and size of the template, but can be altered by the user. In any case, the system of Noda can automatically select a portion of the image to crop and display in the template (e.g. centered crop [0051-10062]), which constitute the user not selecting the portion shown initially in the template as recited in the instant claim. Motivation and combination is taken from the parent claim and incorporated by reference herein.

As to claims 23 and 28, Roses allows the user to manipulate the size of the template areas [0037], where their location is independent of each other, where this would be independent, as in the PDF files referenced earlier [0047]. Further, Noda

teaches that templates (e.g. Figures 10A-10D) may have overlapping images, so very clearly it would be obvious that the various images or portions of the template would be independent of each other since Roses allows the user to control all aspects of the template per se. Motivation and combination is taken from the parent claims and incorporated by reference herein.

As to claims 24 and 29, Roses does not expressly teach but Noda teaches that various templates can be shown to a user to allow the user to select the desired template [0080 specifically, [0078-0082 generally]], and Noda teaches selecting various images via thumbnail in [0055-0057] for example, where it would be obvious that if the user can select from amongst a plurality of visual templates, that thumb nailing the templates would be an obvious expedient to speed the selection process, since Noda does so for images explicitly and implicitly would do so since the plurality of templates would be visible to the user to select from, and this modification (if required) would have been obvious. Motivation and combination is taken from the parent claim and incorporated by reference herein.

As to claims 25 and 30, Roses teaches that the user is allowed to select the image that goes into a particular template area [0055-0058 for examples]. It would be obvious that the user could choose another image to put into the image area depending on their tastes and preferences, since the association between images and base areas is preserved and not made permanent until an output document is created, e.g. a

change the desired image. Motivation and combination is taken from the parent claim and incorporated by reference herein.

As to claims 31 and 32, Roses and Noda do not expressly teach but Haeberli 1:55-2:6 clearly teaches that online photo shops are available where the user can manipulate the image on the web and then have it printed and mailed to them. Therefore, this is an obvious expedient for the reasons described therein, and constitutes 'forwarding the product design to a printer for printing', where a 'printer' would constitute a printing device at an on-line photo finisher (e.g. the provider of Shutterfly, the Haeberli patent, etc). Motivation and rationale are incorporated by reference from the rejection(s) of the parent claim(s).

(10) Response to Argument

To discuss applicant's arguments, it is respectfully pointed out that section VII, Arguments, as found on pages 3-4, consists only of a summary of claimed subject matter, and extols the virtues of applicant's invention.

Before beginning a discussion and rebuttal of applicant's arguments, it is helpful to note that applicant is arguing that cropping of the image for customization takes place **after the image has been cropped and placed in the product.**

See page 5, 2nd paragraph, with respect to Roses reference: "...After the user has pressed Place Images 613 and placed the image version in the product design, Roses discloses no system or method for allowing the user to modify the displayed version of the image so as to crop the image in a different way."

See page 6, 2nd paragraph, with respect to Noda reference: "Noda does not retain any information about where within image 46 the cropped version was taken and Noda contains no suggestion of responding to a user cropping request by displaying image 46 and a cropping indicator positioned to indicate the currently cropped portion within the overall image."

See page 7, 2nd paragraph, with respect to Haeberli reference: "Haeberli does not teach that the saved cropping information might be employed to respond to a custom cropping request from a user to display a cropping indicator positioned to indicate to the user the portion of the base image that is the current content of the image container. "

A close examination of the claims reveals **THAT THERE IS NO TEMPORAL COMPONENT OR STORED INFORMATION, REQUIREMENT FOR RETAINED and/or STATE information.** That is, the claim merely requires that the operation occur once. It states nothing concerning being able to repeat such operations, such information being stored, or any particular time sequence or order, etc. Therefore, the entirety of applicant's case rests upon **a limitation that is not in the claims, but is only found in the specification.**

1. Claims 1, 3-7, 21-25, and 31-34 stand and fall together

Beginning with **page 5, first paragraph**: applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims

define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., "responding to a user custom cropping request by displaying image information in the specific manner recited in ...") are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims.¹

Page 5, Second paragraph: Summary of Roses reference. This summary is inaccurate at least because Roses clearly teaches cropping [0037,0043,0048] with cropping taught as attribute information [0048] of the PDF layers that the user can adjust. Clearly, if such an attribute is selectable and changeable (as well as scaling and the like that are specified as attributes) there must inherently be a facility in the recited reference to perform such an action. Examiner submits that it would have been obvious to have a facility to allow a user to crop an image. There is no recitation of "a different way" in the claim.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., "different manner of cropping") are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification

¹ In re Van Geuns, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Page 5, Third paragraph, and Page 6, first paragraph: Summary of Noda reference².

Page 6, second paragraph:

Applicant is arguing that **“Noda does not retain any information about where within image 46 the cropped version was taken ...”** This assertion is: a) not found in the instant claims and/or claimed invention; and b) is an impermissible attempt to import a limitation from the specification into consideration of the instant claims³. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., “retaining state information” or “information about where within image 46 the cropped version was taken”) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Specifically, Haeberli allows the user to modify cropping information, since the **stored current product information**, where that information includes product attributes including cropping information – boundary, shape, rotation, and orientation of the selected portion of the image to be applied to the recited image (21:5-18, 21:35-55), such that any changes the user makes or has made to the image are retained through tag information so that they can be undone or redone as needed (21:55-23:20).

Therefore, since **each image** has stored information, **each image container would therefore contain at least a portion of a selected base image**. Therefore, the limitation that applicant argues is in fact **EXPLICITLY AND EXPRESSLY TAUGHT** by the Haeberli reference in the cited sections above (e.g. 21:5-18, 21:35-55, and 21:36-23:20).

Page 6, third paragraph, and page 7, first paragraph: Summary of Haeberli reference⁴

Page 7, second paragraph: Applicant is arguing limitations not in the claims **AND** Haeberli does in fact teach the limitations asserted by applicant. Applicant himself cites to 21:6-18; examiner cites to 21:5-17 as well: "...The stored current product attributes for a given image 2102 can include product attributes relating to rotation of the image, **cropping information such as the boundary, shape, and orientation of the selected portion of the image...**" Examiner strongly disagrees with applicant's assertion that "...Haeberli does not teach that the saved cropping information might be employed to respond to a custom cropping request from a user..."

Haeberli clearly teaches that the change information (e.g. separate modification history information) is stored for each image, and the cropping information is presented as shown in **Figures 9a-9b**. Clearly, the cropping indicator of Haeberli is shown visibly and illustrates the portion of the image that is currently selected to be printed or otherwise present in the final output product. Therefore, given that product information

² Examiner declines to subscribe to any interpretation or characterization, explicit or implied, of said reference set forth by applicant in aforementioned paragraph

³ In re Van Geuns, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

(such as the diptych shown in Figure 8, and alternatively a triptych – 12:5-20) can be saved on the website, where **each product (e.g. IMAGE 21:5-17)** has retained state information. Specifically, Haeberli allows the user to modify cropping information, since the **stored current product information**, where that information includes product attributes including cropping information – boundary, shape, rotation, and orientation of the selected portion of the image to be applied to the recited image (21:5-18, 21:35-55), such that any changes the user makes or has made to the image are retained through tag information so that they can be undone or redone as needed (21:55-23:20).

Therefore, since **each image** has stored information, **each image container would therefore contain at least a portion of a selected base image**. Therefore, any changes made to the base image(s) are saved on the website and the user can come back and redo/undo them later, since each image has separate product modification information attached to it. Therefore, Haeberli **must** store that state information until later. The reference clearly sets forth and teaches what applicant has alleged that it does not teach.

Applicant's arguments are therefore inapposite. Since Roses and Noda- product generation systems – are being modified, clearly they would retain the product state information and separate product modification information histories as recited and discussed above.

Page 7, last paragraph: Allegations that the combination fails to teach the recited claim. Specifically, the allegation of customization of image content of an image

⁴ Examiner declines to subscribe to any interpretation or characterization, explicit or implied, of said

area clearly is met by Haeberli (21:5-55, secondarily 21:56-23:15), where clearly the user can select the desired image container (Roses (claim 35, [0047], etc), Noda – see for example Figures 9a-9f and 10a-10d)) in a displayed product design, and in response to the user request, displaying the base image associated with the image container (Haeberli Figures 9a, 9b; Noda Figures 2-5) and the cropping indicator (Haeberli 904, Figures 9a-9b; Noda element 84 in Figure 3) positioned to indicate the portion of the base image (Haeberli element 904; Noda element 84) that is the current content of the image container.

2. Dependent claim 21

Firstly, the claim itself:

The method of claim 1 wherein the **base image associated with the selected image container** was not associated with the selected image container **by the user**

First of all, the claim as written only requires **one** image container to exist, which can be and in that case would be the recited '**selected image container.**'

Such a claim also incorporates the limitations of the parent claim. As noted in the rejection to claim 1, Roses teaches templates having one or more areas in which the user may insert image(s).

That having been said, applicant's arguments turn on the definition of the word 'associated.' However, applicant's specification only includes an example in [0023], where a customizable template is provided that 'may contain ... images...' There is no

teaching of how such an association would be made, and the term 'associated' is never used in a specific context or example. Therefore, in keeping with MPEP 2111 ('broadest reasonable interpretation) and the guidelines set out therein (derived from *AWH v. Phillips*), it is then proper to turn to external sources, e.g. dictionaries, to determine the proper use of the term, where, in the instant context, an appropriate definition would be "to connect or bring into relation with." (Applicant does not provide a location for support or definition of such function)

Utilizing that definition, the claim therefore requires that the user not **directly** perform the association operation. Therefore, it is instructive to review the teaching of the Noda reference. Noda [0005] states that the prior art method of taking a picture, scanning it in, then opening image software, and finally generating a cropping area and cutting and pasting such is highly inefficient. In the instant context, Noda [0060] teaches the scanning in of an image, where the user presses a read-in button 55 to initiate that process.

The prior art method described in [0005] resulted in the user directly associating the image with an image container by first selecting the desired area for cropping in one application and then cutting-and-pasting the resultant image section into an image container. There is no question in that case that the user performed all such steps manually.

However, in the instant case, the user does not do so. While the user may press a button that initiates a scanning process, the user does not then select the image and then place it in the image container. Instead, the **software** performs those steps, such

that the scanned image is **automatically** moved to the image container. The user does not perform that section of the process. It is well known to automate an activity previously done manually (c.f. *In re Venner*, MPEP 2144.04(III)). This point is important in the instant context because that is what the invention of Noda does – it performs at least some of those steps automatically, where, in the prior art as described above, those steps were previously performed manually by the user.

Therefore, given that Noda teaches automation of a series of previously done manual tasks, such a conclusion would cause one to understand that the software performs the actual act of association, rather than the user. The user would merely tell the system to 'Read In' the image, and the computer would perform the actual association of the scanned image with the image container.

3. Independent Claim 11 and Dependent Claims 13-17 and 27-30.

Applicant states on page 8 that such claims stand and fall together with Group I. Therefore, no discussion is required; see that for Group 1.

4. Dependent claim 26

Applicant states that this claim stands and falls together with claim 21. Again, no further discussion is therefore required.

Art Unit: 2628

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Eric Woods

Conferees:

Ulka Chauhan 

Mark Zimmerman 


ULKA CHAUHAN
SUPERVISORY PATENT EXAMINER